

Guidance on Renting Business Property

The first thing to understand is that leasing business property is completely different from renting residential property. If you have rented a house or flat before, do not expect that you will have the same rights or that a commercial landlord will have the same obligations to you.

An individual renting a house is not expected to know anything about safety regulations or property maintenance. All they are required to do is pay their rent, keep the place clean and tidy and contact the Landlord whenever something goes wrong.

When renting a commercial or industrial property, the Landlord is not expected to know how the Tenant plans to operate, what temporary alterations might be carried out to the building or what regulations will apply to a particular trade. The Tenant is regarded as a business that should be capable of managing their own operations, employing contractors and taking professional advice when necessary.

The Commercial Landlord's Perspective

Business properties available for rent are owned by someone as a form of investment. A big city centre office building may be owned by a pension company who bought it or built it with £50 million from the funds that they manage. Smaller shops, offices and workshops worth perhaps £100k are likely to be owned by a private company, a personal pension fund or an individual who has invested their savings in it. That money is capital which could have been put in a bank or used to purchase bonds to earn a few percent interest, but instead it has been used to buy a physical asset.

The Landlord does not get his money back from the rent his Tenant pays. He gets that back only when the land or property is sold. Rent from all his properties should cover the Landlord's business overheads and leave him with a profit that is more than he would have got in interest by putting his savings in the bank. Otherwise there would be no point in buying property with it and taking on the inevitable overheads and business risk.

So, the Landlord will want you to look after his property investment and then hand it back in good condition. You would not be happy to put £100k of your own money in the bank and then find when you go to withdraw it 10 years later that there is only £40k left. It would not be much consolation for the bank to tell you they had paid you interest every year so really you have already had most of your money back.

What is a Lease?

In order for there to be a lease, five things have to be clearly agreed.

Who is leasing what to whom for how long and for how much.

1. The Landlord - who is normally the property owner.
2. The Premises – which is the building or part of a building to be leased, including any other rights that go with it, such as exclusive yard or parking spaces. It is normal to attach a plan which identifies the Premises with coloured outlines and/or shading.
3. The Tenant – who is going to occupy and take temporary possession of the property.

4. The Term – which is the period of time that the Premises is being leased for. This can either be specified as an Entry Date and length of lease (e.g. from 1st April 2011 for a period of one year, or it can be specified as an Entry Date and Expiry Date (e.g. from 23rd April 2011 to and including 31st December 2014).
5. The Rental – which is an agreed amount of rent to be paid by the Tenant to the Landlord. It is normally specified as an amount per year (per annum) or in some cases as an amount payable each month.

If there is evidence that these five things have been agreed then a contract for lease is likely to have been entered into. Obviously it is best for the agreement to be clearly set out in a document that is signed by both parties. A properly drafted legal document will ensure that there is no ambiguity and that all foreseeable circumstances are covered. This protects both the Landlord and the Tenant.

What is a Registered Lease?

A Lease is a contract between the Landlord and the Tenant. That original contract document can be formally recorded by registering it in the Books of Council & Session in Edinburgh. You will normally receive back a bound copy of the document with registration stamps on it, referred to as an Extract. There is a modest charge for registering a Lease and for each bound Extract.

The advantage of registering a lease is that it gives legal standing to the contract. A landlord or tenant can then seek to enforce the lease terms without first arguing the validity of their contract in court.

If a leased property is sold, then the new owner will automatically take over the Landlord's benefits and obligations of a registered lease and the Tenant continues to have the same rights to occupy their Premises. A tenant without a registered lease only has a contract with the previous owner so, if the property is sold in those circumstances, they may have no legal right to continue occupying the Premises. Of course a claim for damages could be raised against the former owners but, if they are a property company that has gone into liquidation, court action may be pointless.

What is a Full Repairing & Insuring ("FRI") Lease?

This means exactly what it says; the Tenant is fully responsible for all repairs, maintenance and insurance of the Premises as though they were the owner. If anything has to be replaced or rebuilt then it is the Tenant who needs to do it. If new laws or regulations come into force then it is the Tenant who has to do whatever is necessary to comply with them.

Remember that when you lease a business property, the Landlord is handing over temporary possession of their capital investment to you. You will therefore have an obligation under the Lease to look after the property and at least hand it back in the same condition that you took it on.

You will also be required to pay for insuring the building although Landlords will normally arrange an insurance policy themselves to make sure adequate cover is in place at all times. They will then re-charge the cost of any premiums to each tenant.

The Landlord's policy will generally only cover his own fixtures and fittings so a Tenant should have an additional business insurance policy that covers their own contents.

If the Premises is damaged while leased to a Tenant, then it may not be fit for occupation until repairs or rebuilding work are carried out. The Tenant technically remains liable for ongoing payment of rent and service charges under the Lease, so it is common for a period of rent (possibly up to two years) to be covered by the property owner's insurance policy.

Service Charges

This is a charge over-and-above the rent to re-bill a fair proportion of expenses that are incurred by a Landlord for work carried out or services provided to a building or an estate where more than one tenant occupies.

It is normal for a tenant to be fully responsible for any costs relating to the unit which they have leased and also to be jointly responsible for costs relating to common areas. Those common areas will be looked after by the Landlord or their appointed managing agent.

Items in shared areas that are often dealt with in a common service and maintenance budget include:

- Building and Public Liability Insurance cover
- Management of insurance claims
- Repairs to the structure and fabric of a shared building
- Roof gutter cleaning
- Metered water supply charges
- Electricity for heating, lighting, etc
- Provide access for meter reading and meter replacement
- Cleaning of stairs, corridors and toilets
- Feminine hygiene services
- Window cleaning
- Lift maintenance
- Management of door entry systems and security
- CCTV equipment installation and monitoring
- Fire Safety Plan management
- Inspection, testing and replacement of fire extinguishers
- Regular testing of fire alarm and emergency lights
- Periodic inspection of fixed electrical installations (landlord supply)
- Changing light bulbs and replacement of light fittings
- Internal and external redecoration of buildings
- Replacement of carpets
- Refuse collections
- Grass cutting & gardening
- Litter picking and emptying of litter bins
- Clearing away fly-tipped rubbish (often including pallets dumped after deliveries)
- Car park, roadways and yard pot-hole repairs or re-surfacing
- Clean out road gullies and clear blocked drains
- Repairs and repainting of boundary walls and railings
- Estate signage and directory boards

Rent Review

For a relatively short lease, the Landlord and Tenant normally just agree renewal terms when it is getting close to the natural expiry date. A longer lease will often include provision for the amount of rent payable to be re-assessed at regular intervals, possibly every three or five years, to bring it in line with current open market rates. When the new rental rate has been agreed, this change to the original lease terms is recorded by drafting a 'minute of rent review' for the parties to sign.

Ending of a Lease

Although a lease will specify an expiry date or define a length of time for it to run, the lease will only end when either the Landlord or the Tenant gives proper notice that they wish it to terminate. That is referred to as a Notice to Quit. The length of notice required will be specified in the lease terms or common law will apply. The notice should be in formal writing, addressed to the correct person/company at the right address and delivered in the correct way (usually by Recorded Delivery). The day of posting and the day of receipt are not counted and a period for postal delivery needs to be allowed. A minimum of eight weeks should therefore be assumed, unless the lease terms require even longer notice.

If a proper Notice to Quit is not served, the Lease will automatically continue by a process known as *Tacit Relocation*. Effectively, the Lease renews on the same terms for a period equal to the original term, but not exceeding one year. So a six-month lease would renew for six months but a ten-year lease would just renew for a further 12 months. The existing rent will continue so a Landlord may actually just allow automatic renewal if no rent increase is being demanded.

If the Tenant or Landlord want to secure a longer commitment, or the rent is to be increased, then that needs to be formally documented as a change to the existing lease terms by drafting a 'minute of extension' or a 'minute of variation'.

Irritancy

This is the process for a landlord to terminate the Lease, usually for non-payment of rent but it can be invoked for any breach of their lease obligations.

The Landlord must write formally to the Tenant advising of the breach and warning that the lease may be irritated (terminated) if the position is not rectified within a reasonable period of time. That will be either payment of the outstanding sums or action which needs to be taken. This is known as a 'notice of intention to irritate'.

If a tenant remains in breach of their lease terms after the period of notice has expired, the landlord can then write formally to inform the Tenant that their lease has been irritated (terminated). If it hasn't already happened, the situation now starts to involve solicitors, court orders for eviction, visits by Sheriff Officers, legal claims for damages and debt recovery procedures. It may also lead to a petition for liquidation of the Tenant company or sequestration (bankruptcy) of the business owner. That inevitably leads to unpleasantness and it is all avoidable if the parties continue to communicate and are open and honest about any problems. The landlord will normally be willing to help a good tenant through short-term difficulties. After all, they want to keep a tenant if possible and legal action is always time-consuming and expensive.

Is a Licence Agreement different from a Lease?

A licence agreement is a contract between Landlord and Tenant which confers some rights to occupy and use specific parts of a property, usually with some element of shared possession with the landlord and possibly with other tenants. This might be in a shopping centre or business centre situation.

A licence is less than a 'proper' lease. It is not technically a lease at all. A tenant will generally have fewer rights but the landlord will also not have all the same rights and remedies that lease law provides.

This document has been prepared by Sim Property Management Ltd for general background guidance and information only. It is not intended to form the basis of any contract and nothing contained herein should be relied upon. We believe that you should always consider taking legal advice from a solicitor before entering into any contract and we recommend seek guidance from other relevantly qualified professionals with regard to property matters. Getting it wrong can be expensive.